SUPREME COURT, U.S.

FILED

JAN 8 1974

MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

No. 73-613

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA—LOCAL NO. 540 AND RALPH D. EDGERTON,

Petitioners,

v.

GEORGE D. LUSK,

Respondent.

PETITIONERS' REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI

BEECHER E. STALLARD
JAY J. LEVIT

Counsel for Petitioners

1223-29 Central National Bank Bldg.
Richmond, Virginia 23219

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The petition should be granted because:

1. The *per curiam* decision of the Fourth Circuit, affirming the District Court, and awarding damages to and ordering the transfer of Lusk's union membership into Local Union No. 540, is in direct conflict with decisions of the Third and Ninth Circuits. *Cf. Hughes* v. *Iron Workers, Local 11 and Parish* v. *Legion,* cited in the petition. The Ninth Circuit's decision in *Parish* relies on *Hughes,* and *Parish* was decided *after United Mine Workers* v. *Gibbs,*

the latter case upon which respondent relies. In *Gibbs*, unlike the *Hughes* and *Parish* cases, and the case at bar, the Labor-Management Reporting and Disclosure Act of 1959 was *not* involved. Respondent relies on *Gibbs* for pendent jurisdiction, but *Parish*, decided *after Gibbs*, was not influenced by *Gibbs*.

2. The Fourth Circuit has decided a federal question in a way in conflict with an applicable decision of this Court. The District Court expressly and specifically concluded in its findings that the Union would "likely" give preference in employment to those other than Lusk. Lusk presented no evidence to this effect. Thus, such an assumption adopted by the Fourth Circuit, is in direct conflict with this Court's prior decision in *Teamsters Local 357* v. *N.L.R.B.*, 365 U.S. 667, 676 (1961), cited at page 24 of the petition.

3. The District Court found that Lusk had been disciplined on various jobs for drinking and sleeping on the job. Respondent seeks to justify an award of damages for the resulting "embarrassment" to Lusk. Respondent specifically stated on the record to the District Court, and to the Fourth Circuit during oral argument, and to this Court in its response (at page 31), that damages are "admittedly speculative." Further, the District Court specifically stated on the record that if respondent were speculating, the District Court would be too.

4. The District Court specifically found that Lusk was knowledgeable of the Union Constitution, and that he had not complied with it with respect to the disputed Union membership. Yet this was brushed aside by the District Court notwithstanding the cited authorities in the petition to the contrary.

5. On the face of the record the District Court's findings simply are not supportable by the evidence. For example, the record shows that the National Labor Relations Board initially took jurisdiction of Lusk's claim, investigated it, and thereafter Lusk withdrew his charges.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jay J. Levit, attorney for the Petitioners, certify that two copies of the foregoing Reply have been served upon counsel for the Respondent by mailing said copies to them in the United States mails, postage prepaid, addressed to Yacobi and Wood, 809 Main Street, Newport News, Virginia 23605.

This 7th day of January, 1974.

JAY J. LEVIT